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DA-02-2065

Released: August 21, 2002

COMMENTS REQUESTED IN CONNECTION WITH QWEST'S SECTION 271 APPLICATION FOR COLORADO, IDAHO, IOWA, NEBRASKA & NORTH DAKOTA

WC Docket No. 02-148

Comments: August 28, 2002

Reply Comments: August 30, 2002

On August 20, 2002, the Commission received the attached *ex parte* filing from Qwest in the above-referenced docket. Throughout this proceeding, parties have raised numerous concerns regarding unfiled agreements between Qwest and competitive LECs. In response, Qwest states that it will file certain agreements, described in the attached *ex parte*, with the relevant state commissions. Qwest also states that it will post these agreements on the web site it uses to provide notice to competitive LECs and announce the immediate availability of the effective interconnection-related terms and conditions in the relevant states. Qwest states that this will facilitate the ability of competitive LECs to request terms and conditions prior to the state commissions' decisions approving the agreements.

We now seek comment on this *ex parte* filing. We have established a short comment period due to the imminent deadline for ruling on Qwest's application. Without deciding what reliance, if any, the Commission will place on this information, the Commission encourages interested parties to respond to this evidence. We emphasize that this public notice does not represent a decision about whether we will accord any weight to the supplemental evidence. The Commission expects that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its determination.¹ If parties in a section 271 proceeding choose to submit new evidence, however, the Commission retains the discretion to waive its procedural rules and consider

¹ See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20570, para. 49 (1997), *writ of mandamus issued sub nom. Iowa Utils. Bd. V. FCC*, No. 96-3321 (8th Cir. Jan. 22, 1998) (*Ameritech Michigan Order*); *Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act*, Public Notice, 11 FCC Rcd 19708, 19711 (Dec. 6, 1996); *Revised Comment Schedule for Ameritech Michigan Application, as amended, for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Michigan*, Public Notice, DA 97-127 (Jan. 17, 1997); *Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 13 FCC Rcd 17457 (Sept. 19, 1997); *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA-99-1994 (Sept. 28, 1999) (collectively "271 Procedural Public Notices").

the evidence,² "to start the 90-day review process anew, or to accord such evidence no weight."³

Comments By Interested Third Parties. Pursuant to our procedures governing section 271 applications⁴ and sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on such information. Comments must be filed by **August 28, 2002** and reply comments must be filed by **August 30, 2002**. All such filings shall refer to the Commission docket number, **WC Docket No. 02-148**. Comments and replies may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. To get further instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

If a party chooses to file comments or replies by paper, an original and four copies must be sent to Marlene H. Dortch, Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, CY-B402, Washington, D.C., 20554. Fifteen additional paper copies of each comment and reply must be delivered to Janice Myles, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C327, Washington, D.C., 20554. One copy of each paper comment and reply must be sent to the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554.

All filings must contain the docket or rulemaking number that appears in the caption of this proceeding. If more than one docket or rulemaking number appears in the caption, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. The filing hours at this location are 8 a.m. to 5:30 p.m. First-class U.S. Postal Service mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must contain the Docket Number, and must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

² See section 1.3 of the Commission's rules, 47 C.F.R. § 1.3.

³ *Ameritech Michigan Order* at 20575, para. 57; Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3968, para. 34 (1999).

⁴ See 271 Procedural Public Notices.

In accordance with the Commission's earlier Public Notice announcing that hand-delivered or messenger-delivered filings are no longer accepted at the Commission's headquarters, **hand-delivered or messenger-delivered filings must be delivered to 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002.**⁵

Filings and comments are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com.

If you are sending this type of document or using this delivery method...	It should be addressed for delivery to...
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8:00 a.m. to 7:00 p.m.)
Commercial overnight mail (other than United States Postal Service Express Mail and Priority Mail)	9300 East Hampton Drive, Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail	445 12 th Street, SW Washington, DC 20554

Parties are strongly encouraged to file comments and replies electronically using the Commission's Electronic Comment Filing System (ECFS). Parties are also requested to send a courtesy copy of their comments and replies via email to: gremondi@fcc.gov; eyockus@fcc.gov; mcarowit@fcc.gov; ccarpino@fcc.gov; meredyth@usdoj.gov; jjewel@puc.state.id.us; penny.baker@iub.state.ia.us; cpost@mail.state.ne.us; pjf@oracle.psc.state.nd.us, and bruce.smith@dora.state.co.us.

Wireline Competition Bureau Contacts:

Michael Carowitz (202) 418-0026
Cathy Carpino (202) 418-1593

⁵ See Public Notice, FCC Announces New Filing Location for Paper Documents, DA 01-2919 (rel. December 14, 2001).



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Melissa E. Newman
Vice President - Federal Regulatory

FILED VIA ECFS

EX PARTE

August 20, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Applications of Qwest Communications International Inc. for Authorization Under Section 271 of the Communications Act. WC Dockets No. 02-148 and 02-189

Dear Ms. Dortch:

By this letter, Qwest Corporation ("Qwest") hereby notifies the Federal Communications Commission ("FCC") that, pursuant to Section 252(e)(2) of the Telecommunications Act of 1996, tomorrow it will file negotiated agreements as described below between Qwest and competitive local exchange carriers ("CLECs") for approval by the state commissions in Colorado, Idaho, Nebraska and North Dakota. This action generally supplements the plans previously announced by Qwest in its reply comments in WC Docket No. 02-148.

By way of background, Qwest has previously filed hundreds of agreements with CLECs under Section 252(e)(2). However, Qwest also has implemented other contractual arrangements with CLECs that it does not believe fall within the prior filing and approval requirements of Section 252.

Earlier this year questions were raised regarding Qwest's decisions in this area, most notably a complaint filed by the Minnesota Department of Commerce ("DOC") alleging, after a review of dozens of unfiled Qwest-CLEC contracts, that eleven of them should have been submitted to the Minnesota commission. Qwest promptly brought this matter to the attention of the FCC and the 13 other state commissions in the Qwest region. This action included providing each state commission with copies of any contracts or amendments cited by the DOC for CLECs that also operated in their state. Qwest requested that if the state commission viewed any contract as an interconnection agreement subject to a Section 252 filing obligation, that contract be approved as such. Qwest also filed a petition with the FCC requesting a declaratory ruling as to the scope of the Section 252(a) filing requirement in the context of various ILEC-CLEC contractual arrangements.

Furthermore, in May Qwest adopted a new policy for reviewing all new agreements with CLECs pending clarification of Section 252(a). Under this policy, Qwest is broadly filing all contracts, agreements, or letters of understanding between Qwest Corporation and CLECs that create obligations to meet the requirements of Section 251(b) or (c) on a going forward basis. A six-person team, including a lawyer from the regulatory department, oversees the contract review process and is responsible for every contract that Qwest enters into with a CLEC to determine whether to file it under Section 252. We believe this commitment goes well beyond the requirements of Section 252(a). For example, it reaches details of business-to-business carrier relations that we do not think the Telecommunications Act requires first to be filed with and approved by state commissions. However, we are committed to follow this process until the FCC issues a decision on the appropriate line drawing in this area.

With regard to older agreements, Qwest naturally has been concerned about its potential penalty liability with regard to second-guessing of its past filing decisions in an area where the standards have not been clearly defined. Qwest has no objection to offering all CLECs in a state the same going forward terms it gives under contract to one local carrier. However, Qwest does not concede that all contracts with CLECs require prior approval, and has been concerned that extending such offers might be read as an admission regarding the scope of Section 252's mandatory filing requirements.

That said, Qwest stated in its Reply Comments in WC Docket No. 02-148 that it would post on its web site all contracts with CLECs in states where it had Section 271 applications pending insofar as those contracts contained effective going forward obligations related to Section 251(b) and (c). Qwest also stated that it would make available such going forward terms to other CLECs under the same policies that apply under Section 252(i). *See* Qwest Reply Comments, WC Docket No. 02-148, at 131-32.

After additional consideration, Qwest is now taking a further step as a sign of its good faith by filing all such agreements under Section 252(e) in addition to posting them on its web site. Specifically, Qwest has reviewed all of its currently effective agreements with CLECs in Colorado, Idaho, Iowa, Nebraska and North Dakota that were entered into prior to adoption of the new review policy described above. Qwest already has filed appropriate agreements with the Iowa Utilities Board in accordance with the Board's recent order. Tomorrow Qwest will file in the remaining four states all such agreements that include provisions creating on-going obligations that relate to Section 251(b) or (c) which have not been terminated or superseded by agreement, commission order, or otherwise. Qwest will ask the respective commissions in these states to approve the agreements such that, to the extent any active provisions of such agreements relate to Section 251 (b) or (c), they are formally available to other CLECs under Section 252(i). In conformation with the structure of Section 252, including the state-specific approval process, opt-in opportunities will be provided on a state-specific basis under Section 252(i) rather than on a region-wide basis.

For the state commissions' benefit, Qwest is marking, highlighting or bracketing those terms and provisions in the agreements which Qwest believes relate to Section 251(b) or (c) services, and have not been terminated or superseded by agreement, commission order, or otherwise. This

should reduce the confusion that could otherwise arise given that these contracts were not prepared as interconnection agreements, sometimes cover multiple subjects, and are of various ages.

We will not ask the state commissions to decide whether any of these contracts, or specific provisions therein, in fact are required to be filed under Section 252 as a matter of law. The state commissions need simply approve those provisions relating to Section 251(b) or (c) under their Section 252(e) procedures, and Qwest will make the going forward provisions related to Section 251(b) or (c) available under Section 251(i). Thus, the state commissions may but need not at this time reach a legal interpretation of Section 252(a), or decide when the 1996 Act makes a filing mandatory, and when it does not. (The Iowa Board has previously made its own ruling on this question. Qwest has indicated that it does not agree with the determination, but is complying with it.)

Qwest is not filing for state commission approval its contracts with CLECs that do not contain provisions that relate to Section 251(b) or (c), or contain provisions relating to Section 251 that have been terminated or superseded by agreement, commission order, or otherwise. Qwest also is not filing routine day-to-day paperwork, settlements of past disputes, stipulations or agreements executed in connection with federal bankruptcy proceedings, or orders for specific services. Included in this last category are contract forms for services already provided for in approved interconnection agreements, such as signaling and call-related databases. (Parties may execute a form contract memorializing the provision of such services offered as described in the interconnection agreement.)

Qwest will request that the state commissions approve the agreements as soon as reasonably practicable. Qwest reserves its rights to demonstrate that one or more of these agreements need not have been filed in the event of an enforcement action in this area. Meanwhile, however, Qwest will offer other CLECs any terms in effect for the benefit of the contracting CLEC pursuant to the policies and rules related to Section 251(i). (Provisions that do not relate to Section 251, that settle past carrier-specific disputes, or that are no longer in effect are not subject to Section 251(i) and this offering.) Should a state commission later conclude that a particular agreement did not have to be filed as a matter of law under Section 252, Qwest nevertheless will honor "opt-in" contracts made with CLECs prior to that decision. However, Qwest necessarily will reserve the right to terminate an "opt-in" arrangement (as well as the interconnection related provision in the contract with the initial customer) in the unlikely event that a state commission finds both that the originally filed contract is of the type that must be filed under Section 252, *and* that the particular term is not in the public interest.

Qwest is filing the relevant CLEC agreements in full, subject to the following actions intended to protect CLEC interests given the confidentiality provisions contained in some of these agreements and the fact that the CLECs involved may deem the information contained therein confidential. First, Qwest is redacting those contract terms that relate solely to the specific CLEC and do not create ongoing obligations, such as confidential settlement amounts relating to resolution of historical disputes between Qwest and the particular CLEC, confidential billing and

bank account numbers, particular facility locations, and CLEC end user customer information. Second, Qwest will ask state commissions to hold the submitted agreements under seal for a short period of time to allow the affected CLECs sufficient time to object to their public disclosure (except those that have been made public to date). Qwest will concurrently notify the CLEC parties to the non-public agreements of this filing and advise them of their opportunity to submit any objections regarding public disclosure to the state commission. Absent other state rules, Qwest is requesting that this confidentiality period be limited to seven days.

Consistent with the discussion in its Reply Comments, Qwest also will be posting the filed agreements on the website it uses to provide notice to CLECs and announcing the immediate availability of the effective interconnection-related terms and conditions in the respective states. This will facilitate the ability of CLECs to request terms and conditions prior to the state commission's decision approving the agreements filed tomorrow. Qwest also will be sending CLECs operating in the states a general advisory notice that they can look to the web site for this information (through regular procedures for such notices). Qwest will remove an agreement from its web site when it has expired, when none of the terms remaining in effect create ongoing obligations as to matters related to Section 251 (b) and (c) of the Telecommunications Act, or in the event that a state commission concludes that the agreement is not subject to Section 252(a).

Furthermore, Qwest promptly will make similar filings in other states (and postings on its web site) where it has pending applications for authority to provide interLATA services under Section 271 (Montana, Utah, Washington and Wyoming). Qwest will advise the Commission when such filings have been made with the relevant states.

Qwest is taking this action as a good faith gesture pending further clarification of the scope of Section 252(a). Qwest does not concede that any of the affected agreements are of the kind that require prior filing and state commission approval. Qwest continues to believe that Congress did not intend all ILEC-CLEC contractual arrangements with a nexus to Section 251 to be formally filed for review, let alone those contracts that do not relate to Section 251 obligations. However, until the FCC rules on the matter, we will follow the course outlined above.

Respectfully submitted,

/s/ Melissa E. Newman
Vice President-Federal Regulatory
Qwest

cc: Michelle Carey
Michael Carowitz
Elizabeth Yockus